

Ser. No.: 10/826,783  
Amdt. Dated: 09 JAN 2006  
Reply to Final Office Action of 06 DEC 2005

## **II. Remarks In Response to the Office Action**

### **A. General Remarks**

Claims 1 and 3-50 are pending in the application.

### **B. Allowable Subject Matter**

1. Claims 1, 3-7, and 20-50 are allowed.
2. Claims 11, 12, 16, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claim. Assignee has amended claim 8 from which claims 11, 12, 16, and 19 depend. Therefore, claims 11, 12, 16, and 19 are believed to be allowable for at least the same reasons presented below with respect to claim 8.

### **C. Claim Rejections – 35 USC § 102**

Claims 8-10, 13-15, 17, and 18 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Nierode (US 6,186,230).

Assignee respectfully traverses the rejection of claims 8-10, 13-15, and 17-18 in so far as Nierode does not teach or suggest all of the limitations of independent claim 8, as amended.

#### **a. Legal Principles**

“For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference.”<sup>1</sup> Further, the “identical invention must be shown in as complete detail as is contained in the patent claim”<sup>2</sup> and the “elements must be arranged as in the claim under review.”<sup>1</sup> Thus, for Nierode to anticipate claims 8-10, 13-15, and 17-18, Nierode must disclose each element as arranged in the claims and in as complete detail as contained in the claims.

#### **b. Review of Nierode**

Nierode is directed to “a method for designing the placement, number, size, and treatment of multiple perforated intervals so that only one such interval is fractured during each fracturing

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<sup>1</sup> *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677 (Fed. Cir. 1988).

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir.), cert. denied, 493 U.S. 853 (1989)

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stage while at the same time determining the sequence order in which intervals are treated" Nierode at col. 3:37-41. By designing the perforation intervals, Nierode's objective is to "select perforation intervals and fracture treatment parameters such that each set of perforation is fractured in a separate stage of treatment and sealed by ball sealers during the fracturing of other intervals" Nierode at col. 4:48-52. To achieve this, Nierode discloses designing the placement, number, size, and treatment of multiple perforated intervals based on a six-dimensional operating window. See Nierode at col. 5:4-48. Parameters for the design are predetermined from calculations and/or well measurements, such as a density log. See Nierode at col. 6:25-35.

#### c. Assignee's Claims

By contrast, independent claim 8, as amended, is directed to a method of treating a formation with fluid. The formation has a plurality of portions and has a casing positioned through the portions. The portions define fracture gradients, and the casing defines a plurality of perforations. Fluid is pumped into the casing in order to treat at least a first portion of the formation *regardless of the location of that first portion in the formation relative to other portions in the formation*. Fluid is pumped into the casing and diverted from the first portion in order to treat at least a second portion of the formation *regardless of the location of the second portion in the formation relative to other portions in the formation*. A determination is made if fluid is substantially diverted from the first portion to the second portion. If fluid is substantially diverted from the first portion to the second portion, fluid is pumped into the casing and diverted from the first and second portions in order to treat at least a successive portion of the formation *regardless of the location of the successive portion in the formation relative to other portions in the formation*.

The amendment to claim 8 is fully supported by the originally filed disclosure and does not add new matter. For example, the amendment to claim 8 is at least supported by Paragraphs [0022]-[0031] and [0033]-[0039].

#### d. Discussion

As previously noted, Nierode is directed to designing the placement, number, size, and treatment of multiple perforated intervals to achieve the objective of separately treating

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<sup>1</sup> *In re Bond*, 910 F.2d 831, 832 Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990)). See also M.P.E.P. 2131.

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perforation intervals. Thus, Nierode fails to disclose *treating portions of a formation regardless of their location in the formation relative to other portions in the formation*, because Nierode is explicitly directed to designing the number, size, and treatment of perforation intervals based on well measurements and calculations. Moreover, Nierode also fails to disclose *determining if fluid is substantially diverted from such portions (i.e., those portions treated regardless of their location relative to other portions in the formation) before treating a successive portion of the formation regardless of its location in the formation relative to other portions in the formation*. Rather Nierode is directed to *designing* the treatment of multiple perforated intervals one at a time and not directly determining if fluid is diverted before treating a successive portion of a formation regardless of its location. For at least these reasons, Nierode cannot anticipate claims 8-10, 13-15, and 17-18. Accordingly, Assignee respectfully requests reconsideration and withdrawal of the rejection, and allowance of claims 8-10, 13-15, and 17-18 is respectfully requested in the next paper from the Office.

D. Conclusion

No fees are believed due. Should any fees be due for any reason, the undersigned representative authorizes the Commissioner to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 501922, referencing order no. 304-0002US.

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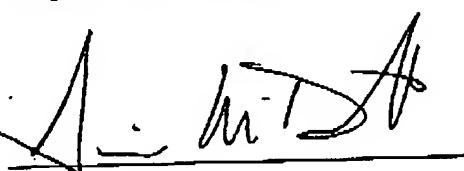
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The Examiner is invited to contact the undersigned patent agent at 832-446-2416 with any questions, comments or suggestions relating to the referenced patent application.

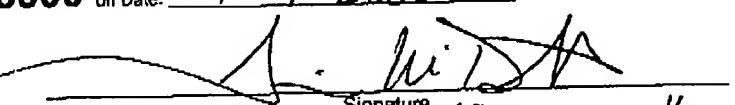
Respectfully submitted,

1-9-2006

Date

  
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